

From: Aikens, Ron
Sent: Thu 4/28/05 10:57 AM
Subject: FW: 76535843 (this was sent for scanning on 4/20/05)

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From: Aikens, Ron
Sent: Tuesday, April 26, 2005 2:26 PM
To: Vela, Clara
Subject: 76535843 (this was sent for scanning on 4/20/05)

/Ron Aikens/
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UNITED STATES PATENT AND TRADEMARK OFFICE

SERIAL NO: 76/535843

APPLICANT: KRB Seed Company, LLC

***7653584**
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CORRESPONDENT ADDRESS:

HOWARD A. MACCORD, JR.
MACCORD MASON PLLC
P.O. BOX 2974
GREENSBORO, NC 27402

**BEFORE THE
TRADEMARK TRIAL
AND APPEAL BOARD
ON APPEAL**

MARK: REBEL

CORRESPONDENT'S REFERENCE/DOCKET NO: 8326-025

CORRESPONDENT EMAIL ADDRESS:

Please provide in all correspondence:

1. Filing date, serial number, mark and applicant's name.
2. Date of this Office Action.
3. Examining Attorney's name and Law Office number.
4. Your telephone number and e-mail address.

EXAMINING ATTORNEY'S MOTION FOR SUSPENSION OF PROCEEDINGS PENDING DISPOSITION OF APPLICANT'S PRIOR FILED APPLICATION

1. On July 25, 2001, Applicant filed application Serial No. 76/289621, for the asserted mark REBEL in typed form, for grass seed.
2. On December 16, 2003, the Examining Attorney prosecuting application Serial No. 76/289621 issued a Final Refusal finding the asserted mark to be generic and thereby rejecting the Applicant's request for registration on the Principal Register pursuant to Section 2(f) of the Trademark Act.
3. On July 30, 2003, Applicant filed application here at issue, Serial No. 76/535843, for the asserted mark REBEL in stylized form, for grass seed.
4. On July 27, 2004, the Examining Attorney prosecuting application Serial No. 76/535843 issued a Final Refusal finding the asserted mark to be primarily merely descriptive and thereby rejecting the Applicant's request for registration on the Principal Register pursuant to Section 2(e)(1) of the Trademark Act.

5. The examining attorney herein submits that the Applicants for applications 76/289621 and 76/535843 are the same.
6. The examining attorney herein submits that the asserted marks at issue in applications 76/289621 and 76/535843 are the substantially similar.
7. The Examining Attorney herein submits that the issues to be determined with respect to applications 76/289621 and 76/535843 are the same, although the issue of “genericness” at issue in Serial No. 76/289621 is a higher standard encompassing the lesser included issue of descriptiveness, which is the subject of the proceedings with respect to Serial No. 76/535843.
8. A disposition in favor of the Office with respect to Serial No. 76/289621 would be dispositive of the issues with respect to Serial No. 76/535843.
9. Pursuant to TBMP Section 1213, the Board may suspend pending final determination of the appeal in another action, provided the request for suspension of an ex parte appeal is made in writing and for good cause. Cf. 37 C.F.R. 2.117 and TBMP 510.
10. The Examining Attorney believes that request for suspension is for good cause.
11. The Examining Attorney hereby requests that the appeal for application Serial No. 76/535843 be suspended and that the time for filing a brief be reset as appropriate upon disposition of the earlier case involving Serial No. 76/289621.

Respectfully submitted,

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